

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MONIQUE GONZALEZ, § No. 5:21-CV-300-DAE  
*Plaintiff,* §  
§  
v. §  
§  
KILOLO KIJAKAZI, §  
*Defendant.* §

ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING  
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

Before the Court is a Report and Recommendation (the “Report”) of United States Magistrate Judge Elizabeth S. Chestney, issued on May 20, 2025. (Dkt. # 24.) The Court finds this matter suitable for disposition without a hearing. After careful consideration and review, the Court **ADOPTS** the Report (Id.) and **GRANTS** Plaintiff’s Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. # 21) for the reasons that follow.

BACKGROUND

The Court agrees with Judge Chestney’s recitation of the facts and incorporates them in full: On March 2, 2022, the Court awarded attorney’s fees in the amount of \$6,400.00 to Plaintiff as a prevailing party under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Dkt. # 20.) Plaintiff’s attorney, David F. Chermol, now seeks attorney’s fees in an amount of \$17,255.50 pursuant

to Section 206(b)(1) of the Social Security Act, codified at 42 U.S.C. § 406(b).

(Dkt. # 21.)

### ANALYSIS

Where, as here, neither party objects to the Magistrate Judge's findings, the Court reviews the Report and Recommendation for clear error. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989).

After careful consideration, the Court adopts the Magistrate Judge's Report. Under Section 206(b)(1) of the Social Security Act, “[w]henever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment. 42 U.S.C. § 406(b)(1)(A).

Here, the record reflects Plaintiff and Mr. Chermol entered into a contingency fee agreement, which provides that Plaintiff will pay Mr. Chermol a fee equal to 25% of the past due benefits awarded to Plaintiff. (Dkt. # 24 at 2.) Judge Chestney notes that Mr. Chermol cannot recover both the full 25% of past-due benefits and keep the \$6,400.00 EAJA fee award. (Id.) Mr. Chermol also acknowledges this limitation and asks the Court to deduct the amount of the EAJA award and award him a net payment of \$10,855.50. (Id.)

The Magistrate Judge reviewed Mr. Chermol's motion, the supporting documentation provided, and the submission by the Commissioner, and found that the fee request is reasonable. (Id. at 3.) Accordingly, Judge Chestney recommends that the Court grant the motion, reduce the requested fee award by the amount already received as an EAJA award, and order payment in the net amount of \$10,855.50 to counsel.

After careful consideration of the record and applicable law, the Court finds that the Magistrate Judge's conclusions are correct and neither erroneous nor contrary to law. The Court agrees with the Report that the contingent fee award requested by Mr. Chermol, which takes into consideration the risk of non-recovery, is reasonable. (Dkt. # 24 at 4.) Accordingly, the Motion for Attorney's Fees is

**GRANTED.**

#### CONCLUSION

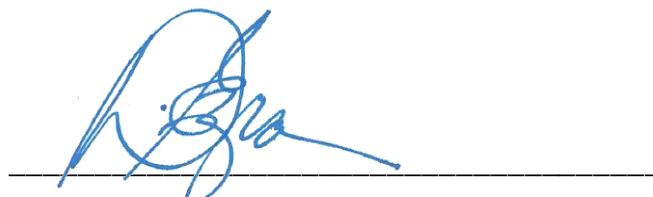
For the reasons stated above, the Court **ADOPTS** U.S. Magistrate Judge Elizabeth S. Chestney's Report and Recommendation in full as the opinion of this Court. (Dkt. # 24.) Plaintiff's Motion and Brief for Attorney Fees Pursuant to 42 U.S.C. § 406(b) is **GRANTED**. (Dkt. # 21.)

**IT IS FURTHER ORDERED** that Plaintiff's counsel, David F. Chermol is **AWARDED** \$17,255.50 in attorney's fees to be certified for payment out of Monique Gonzalez's past-due benefits held by the Commissioner for such

purposes, in accordance with agency policy. However, to effectuate the EAJA refund in this matter, SSA should make a net payment to Mr. Chermol of only \$10,855.50.

**IT IS SO ORDERED.**

**DATED:** San Antonio, Texas, June 11, 2025.



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David Alan Ezra  
Senior United States District Judge